

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.9414 OF 2003

Changdeo Shivaji Kamble : Petitioner

V/s.

Nagsen Co-op. Hsg. Society Ltd. & Ors. : Respondents

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Mr.J.S.Kini for the petitioner.

Mr.K.D.Jha for the respondent nos.2 to 7.

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CORAM : S.A. BOBDE, J.

August 23, 2005.

ORAL ORDER :

1. By this petition, the petitioner has challenged the order of the Maharashtra State Co-operative Appellate Court dismissing the petitioner's application for bringing L.Rs. of the dead opponent on record. The petitioner filed a dispute, inter alia, against one Sarubai who was arrayed as the opponent no.2. This dispute was filed on 31.8.2001 whereas Sarubai had died on 23.4.2001.

2. The petitioner filed the dispute against Sarubai even though he had received information on 2.7.2001 about her death. Thereafter, the petitioner applied for bringing

the legal heirs of Sarubai on record. This application was rejected by the Co-operative Appellate Court.

3. Mr.Kini, the learned counsel for the petitioner, submits that the rejection of the application has led to an anomaly since the heirs of Sarubai have been allowed to be brought on record in Dispute no.934 of 1997 in which Sarubai was arrayed as the opponent no.2. The anomaly, if any, is clearly not objectionable in view of the fact that admittedly Dispute no.934 of 1997 was filed by them against Sarubai when she was alive. The legal heirs have been brought on record upon her death. The situation in the present dispute is entirely different. Sarubai was dead on the date the dispute was filed.

4. Mr.Kini, the learned counsel for the petitioner, relied on a judgement of this Court in Sureshchandra v. Mansukbhai (1996 (2) Bom.C.R. 533) wherein a learned single Judge of this Court (A.P.Shah,J.) has taken the view that where a dead person has been joined due to a mistake made in good faith, the Court can breath life into the suit. This view is taken on the basis of the decision of the Supreme Court reported in J.T. 1993 (4) S.C. 192 which is based on consideration of section 21 of the Limitation Act, 1963. It is clear that A.P.Shah, J. took

the view in that case because the plaintiff there had sent a notice of termination to the defendant by registered post A/D. before filing the suit and acknowledgement was received back with what was supposed to be the defendant's signature, though the defendant was not alive at the relevant time. The facts here are different. The decision in the Sureshchandra's case (supra) has no application at all.

5. Accordingly, the petition is dismissed. The petitioner shall be at liberty to take such appropriate steps as may be advised, in accordance with law.

Sd/-

S.A. BOBDE, J.